



Via ECF

January 28, 2025

Honorable Katherine Polk Failla
 United States District Court
 Southern District of New York
 Daniel Patrick Moynihan United States Courthouse
 500 Pearl Street
 New York, New York 10007-1312

MEMO ENDORSED

Re: USA v. Storm, 23-cr-00430-KPF

Dear Judge Failla,

The Electronic Frontier Foundation (“EFF”) respectfully moves for leave to file the accompanying amicus curiae brief in support of Roman Storm’s motion for reconsideration of his motion to dismiss.¹ Defendant consents to this filing. The Government takes no position on EFF’s motion.

Founded in 1990 and supported by over 30,000 members, the Electronic Frontier Foundation is the largest and oldest digital civil liberties organization in the world.² One of EFF’s longstanding concerns has been the careful application of criminal law to new technologies, especially as it impacts internet users, innovators, and security researchers. Additionally, as part of its Coders’ Rights Project, EFF offers pro bono legal services to researchers engaged in cutting-edge exploration of technology whose work in the public interest may be unjustly chilled by the overbroad application of criminal laws. EFF has also served as counsel or amicus curiae in key cases addressing computer crime statutes.³

¹ No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person other than the amicus curiae or its counsel contributed money that was intended to fund preparing or submitting this brief.

² EFF, by its attorneys, hereby states that it is a corporation organized under Section 501(c)(3) of the Internal Revenue Code. EFF does not have a parent corporation, and no publicly held company has a 10 percent or greater ownership interest in it.

³ These include *Van Buren v. United States*, 593 U.S. 374 (2021) (amicus); *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F. 4th 1180 (9th Cir. 2022); *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012) (“Nosal I”) (en banc) (amicus); *United States v. Nosal*, 844 F.3d 1024 (9th Cir. 2016) (“Nosal II”) (amicus); *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058

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EFF has a particular concern about protecting the development of tools that advance people's privacy and security from overbroad application of criminal laws. Although this case concerns a privacy tool for those using cryptocurrencies, the government's prosecution raises larger civil liberties concerns that could chill the future development of privacy enhancing technologies more broadly.

EFF's proposed amicus brief will help the court evaluate the implications of the government's arguments in the context of the broader need to protect the development of dual-use technologies aimed at protecting privacy and security. Although such tools can also be misused to hide criminal activities, the government must be careful in its criminal prosecutions to avoid overreaching and chilling the creation of tools that are used to enhance people's privacy. EFF believes that the government has stretched the criminal laws at issue here too far. If the government believes it is appropriate to criminalize these technologies, it must seek relief from Congress and not rely on IEEPA and the other laws deployed in this prosecution, or, worse, attempt to bootstrap ancillary activities even further removed from any criminal acts into the ambit of these laws.

Respectfully submitted,

/s/ Mitchell L. Stoltz
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cc: All counsel via ECF

(9th Cir. 2016) (amicus); *United States v. Valle*, 807 F.3d 508 (2d Cir. 2015) (amicus); and *United States v. Auernheimer*, 748 F.3d 525 (3d Cir. 2014) (appellate co-counsel); *United States v. Cioni*, 649 F.3d 276 (4th Cir. 2011) (amicus); *Craigslist, Inc. v. 3Taps, Inc.*, 964 F. Supp. 2d 1178 (N.D. Cal. 2013) (amicus); *United States v. Drew*, 259 F.R.D. 449 (C.D. Cal. 2009) (amicus).

Application GRANTED. The Clerk of Court is directed to terminate the pending motion at docket entry 122.

Dated: January 29, 2025
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE